



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/170332

PRELIMINARY RECITALS

Pursuant to a petition filed November 23, 2015, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to deny Medical Assistance (MA) authorization for Nuvigil, a hearing was held on January 13, 2016, by telephone. A hearing set for December 16, 2015 was rescheduled at the petitioner's request.

The issue for determination is whether Nuvigil can be approved for petitioner's diagnosis.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Written submission of [REDACTED] Pharmacy Consultant

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Marinette County who receives MA.
2. On October 2, 2015 [REDACTED] requested prior authorization on petitioner's behalf for Nuvigil, PA no. [REDACTED]. The DHCAA denied the request by a letter dated November 5, 2015.
3. Petitioner's diagnosis is idiopathic hypersomnia.

DISCUSSION

The DHCAA may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat., §§49.46(2) and 49.47(6)(a), as implemented by the Wisconsin Administrative Code, Ch. DHS 107. The specific medical necessity requirements at issue are as follows:

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 - ...
 3. Is appropriate with regard to generally accepted standards of medical practice;
 - ...
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature.

Wis. Admin. Code, §DHS 101.03(96m). It is the provider's responsibility to justify the need for the service. Wis. Admin. Code, §DHS 107.02(3)(d)6.

Nuvigil is a non-preferred drug in a class called Stimulants and Related Agents. DHCAA case summary, page 3. In December, 2014, the Department issued Forward Health Update no. 2014-78 to MA providers. The Update described changes to the Preferred Drug list and other pharmacy policy changes. Its effective date was January 1, 2015.

The Update provided that Nuvigil would be approved only to treat the following clinical conditions: narcolepsy, obstructive sleep apnea/hypopnea disorder, and shift work sleep disorder. Update 2014-78, page 7. A related drug called Modafinil (also known as Provigil) can be approved for those conditions as well as attention deficit disorder. Petitioner was approved for Provigil in the past because his doctor reported his condition as shift work sleep disorder, but petitioner's current doctor has negated that diagnosis (petitioner reported that he never was diagnosed with shift work sleep disorder, so it is possible that the former doctor fudged on the diagnosis to get the drug approved).

Because petitioner has none of those diagnoses, the DHCAA correctly denied the request for Nuvigil. I offered to provide the DHCAA consultant with the materials petitioner provided for the hearing; when I described them Ms. [REDACTED] confirmed that the DHCAA was aware of those materials and did not find them convincing for Nuvigil's effectiveness for petitioner's diagnosis.

At this point it is up to doctors to make the case to the DHCAA for Nuvigil and Provigil with respect to petitioner's diagnosis. The Division of Hearings and Appeals does not have authority to approve the drug in contradiction to the department's policy.

CONCLUSIONS OF LAW

The DHCAA correctly denied the request for Nuvigil because the Department does not cover the drug for petitioner's diagnosis.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 20th day of January, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 20, 2016.

Division of Health Care Access and Accountability